

MT LEGISLATIVE HISTORY

Chapter 610 1982

Bill H 873 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 20 ☒ C

Hearing Date(s) Apr 02 ☒ C

Mar 26 ☒ C

Apr 08 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 26 ☒ C

Apr 08 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 873

INTRODUCED BY HANNAH, PINSONEAULT

IN THE HOUSE

MARCH 4, 1987	ON MOTION, RULES SUSPENDED TO ALLOW INTRODUCTION OF HB NO. 873.
MARCH 10, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 28, 1987	PRINTING REPORT. SECOND READING, DO PASS.
MARCH 30, 1987	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 91; NOES, 4. TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 2, 1987	ON MOTION, RULES SUSPENDED TO ADMIT TRANSFERENCE OF HB NO. 873. INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
APRIL 9, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 11, 1987	SECOND READING, CONCURRED IN.
APRIL 13, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0. RETURNED TO HOUSE.

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

APRIL 14, 1987

1 House BILL NO. 873
2 INTRODUCED BY [Signature]
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE HOMICIDE LAWS; AMENDING SECTIONS 41-5-305,
6 45-2-103, 45-2-202, 45-5-102 THROUGH 45-5-104, 46-18-201,
7 46-18-231, 50-20-108, AND 50-20-112, MCA; AND REPEALING
8 SECTION 45-5-101, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 41-5-305, MCA, is amended to read:

12 "41-5-305. Detention and shelter care of youth. (1) A
13 youth taken into custody may not be detained in a jail or
14 other facility for detention purposes unless he has
15 allegedly committed an act which if committed by an adult
16 would constitute a criminal offense, and:

17 (a) the alleged act is one of the following:

18 (i) ~~criminal~~ homicide as defined in ~~45-5-101~~ 45-5-102
19 through 45-5-104;

20 (ii) arson as defined in 45-6-103;

21 (iii) aggravated or felony assault as defined in
22 45-5-202;

23 (iv) robbery as defined in 45-5-401;

24 (v) burglary or aggravated burglary as defined in
25 45-6-204;

1 (vi) sexual intercourse without consent as defined in
2 45-5-503;

3 (vii) aggravated kidnapping as defined in 45-5-303;

4 (viii) possession of explosives as defined in 45-8-335;

5 (ix) criminal sale of dangerous drugs for profit as
6 included in 45-9-101; or

7 (x) attempt as defined in 45-4-103 of any of the acts
8 enumerated in subsections (1)(a)(i) through (1)(a)(ix);

9 (b) he has escaped from a correctional facility;

10 (c) he has violated a valid court order or an
11 aftercare agreement; or

12 (d) he meets the criteria for detention established by
13 the youth court.

14 (2) A youth taken into custody may not be sheltered
15 prior to the hearing on the petition except when:

16 (a) the youth and his family need shelter care to
17 address their problematic situation when it is not possible
18 for the youth to remain at home;

19 (b) the youth needs to be protected from physical or
20 emotional harm;

21 (c) the youth needs to be deterred or prevented from
22 immediate repetition of his troubling behavior;

23 (d) shelter care is necessary to assess the youth and
24 his environment;

25 (e) shelter care is necessary to provide adequate time

1 for case planning and disposition; or

2 (f) shelter care is necessary to intervene in a crisis
3 situation and provide intensive services or attention that
4 might alleviate the problem and reunite the family."

5 Section 2. Section 45-2-103, MCA, is amended to read:

6 "45-2-103. General requirements of criminal act and
7 mental state. (1) ~~A person is not guilty of an offense,~~
8 ~~other than~~ Except for deliberate homicide as defined in
9 45-5-102(1)(b) or an offense which involves absolute
10 liability, a person is not guilty of an offense unless, with
11 respect to each element described by the statute defining
12 the offense, he acts while having one of the mental states
13 described in subsections (33), (37), and (58) of 45-2-101.

14 (2) In deliberate homicide under 45-5-102(1)(b), the
15 offender must act while having the mental state of purposely
16 or knowingly only as to the underlying felony referred to in
17 45-5-102(1)(b).

18 (3) The existence of a mental state may be inferred
19 from the acts of the accused and the facts and circumstances
20 connected with the offense.

21 (4) If the statute defining an offense prescribes a
22 particular mental state with respect to the offense as a
23 whole without distinguishing among the elements thereof, the
24 prescribed mental state applies to each such element.

25 (5) Knowledge that certain conduct constitutes an

1 offense or knowledge of the existence, meaning, or
2 application of the statute defining an offense is not an
3 element of the offense unless the statute clearly defines it
4 as such.

5 (4)(6) A person's reasonable belief that his conduct
6 does not constitute an offense is a defense if:

7 (a) the offense is defined by an administrative
8 regulation or order which is not known to him and has not
9 been published or otherwise made reasonably available to him
10 and he could not have acquired such knowledge by the
11 exercise of due diligence pursuant to facts known to him;

12 (b) he acts in reliance upon a statute which later is
13 determined to be invalid;

14 (c) he acts in reliance upon an order or opinion of
15 the Montana supreme court or a United States appellate court
16 later overruled or reversed; or

17 (d) he acts in reliance upon an official
18 interpretation of the statute, regulation, or order defining
19 the offense made by a public officer or agency legally
20 authorized to interpret such statute.

21 (5)(7) If a person's reasonable belief is a defense
22 under subsection (4) (6), nevertheless he may be convicted
23 of an included offense of which he would be guilty if the
24 law were as he believed it to be.

25 (6)(8) Any defense based upon this section is an

1 affirmative defense."

2 Section 3. Section 45-2-202, MCA, is amended to read:

3 "45-2-202. Voluntary act. A material element of every
4 offense is a voluntary act, which includes an omission to
5 perform a duty which the law imposes on the offender and
6 which he is physically capable of performing, except for
7 deliberate homicide under 45-5-102(1)(b) for which there
8 must be a voluntary act only as to the underlying felony.

9 Possession is a voluntary act if the offender knowingly
10 procured or received the thing possessed or was aware of his
11 control thereof for a sufficient time to have been able to
12 terminate his control."

13 Section 4. Section 45-5-102, MCA, is amended to read:

14 "45-5-102. Deliberate homicide. (1) ~~Except as provided~~
15 ~~in 45-5-103(1), criminal homicide constitutes~~ A person
16 commits the offense of deliberate homicide if:

17 (a) ~~it is committed~~ he purposely or knowingly causes
18 the death of another human being; or

19 (b) ~~it is committed while the offender is engaged in~~
20 ~~or is an accomplice in the commission of, an attempt to~~
21 ~~commit, or flight after committing or attempting~~ he attempts
22 to commit, commits, or is legally accountable for the
23 attempt or commission of robbery, sexual intercourse without
24 consent, arson, burglary, kidnapping, aggravated kidnapping,
25 felonious escape, felony assault, aggravated assault, or any

1 ~~other forcible felony which involves the use or threat of~~
2 ~~physical force or violence against any individual and in the~~
3 ~~course of the forcible felony or flight thereafter, he or~~
4 ~~any person legally accountable for the crime causes the~~
5 ~~death of another human being.~~

6 (2) A person convicted of the offense of deliberate
7 homicide shall be punished by death or life imprisonment as
8 provided in 46-18-301 through 46-18-310 or by imprisonment
9 in the state prison for a term of not less than 10 years or
10 more than 100 years, except as provided in 46-18-222."

11 Section 5. Section 45-5-103, MCA, is amended to read:

12 "45-5-103. Mitigated deliberate homicide. (1) ~~Criminal~~
13 ~~homicide--constitutes~~ A person commits the offense of
14 mitigated deliberate homicide when a--homicide--which--would
15 otherwise--be--deliberate homicide is committed he purposely
16 or knowingly causes the death of another human being but
17 does so under the influence of extreme mental or emotional
18 stress for which there is reasonable explanation or excuse.
19 The reasonableness of such explanation or excuse shall be
20 determined from the viewpoint of a reasonable person in the
21 actor's situation.

22 (2) It is an affirmative defense that the defendant
23 acted under the influence of extreme mental or emotional
24 stress for which there was reasonable explanation or excuse,
25 the reasonableness of which shall be determined from the

viewpoint of a reasonable person in the actor's situation. This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(2)(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222."

Section 6. Section 45-5-104, MCA, is amended to read:

"45-5-104. Negligent homicide. (1) ~~Criminal--homicide~~ constitutes A person commits the offense of negligent homicide ~~when-it-is-committed if he~~ negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(2)(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 7. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1)

Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of court appointed counsel as provided in 46-8-113;
- (ix) community service;
- (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(4) Except as provided in 46-18-222, the imposition or

execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment."

Section 8. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty

1 of imprisonment could be imposed, the court may impose a
 2 fine, only in accordance with subsection (3), and in lieu of
 3 or in addition to a sentence of imprisonment. For those
 4 crimes for which penalties are provided in 45-5-103(2),
 5 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2),
 6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3),
 7 45-9-102(3), and 45-9-103(2), a fine may be imposed in
 8 accordance with subsection (3) in addition to a sentence of
 9 imprisonment.

10 (2) Whenever, upon a verdict or plea of guilty, a
 11 person has been found guilty of an offense for which a
 12 misdemeanor penalty of a fine could be imposed, the court
 13 may impose a fine only in accordance with subsection (3).

14 (3) The court may not sentence a defendant to pay a
 15 fine unless the defendant is or will be able to pay the
 16 fine. In determining the amount and method of payment, the
 17 court shall take into account the nature of the crime
 18 committed, the financial resources of the defendant, and the
 19 nature of the burden that payment of the fine will impose.

20 (4) Any fine levied under this section in a felony
 21 case shall be in an amount fixed by the court not to exceed
 22 \$50,000."

23 Section 9. Section 50-20-108, MCA, is amended to read:

24 "50-20-108. Protection of premature infants born
 25 alive. (1) A person commits the an offense of-criminal

1 homicide, as defined in ~~45-5-101~~ 45-5-102 through 45-5-104,
 2 if he purposely, knowingly, or negligently causes the death
 3 of a premature infant born alive, if such infant is viable.

4 (2) Whenever a premature infant which is the subject
 5 of abortion is born alive and is viable, it becomes a
 6 dependent and neglected child subject to the provisions of
 7 state law, unless:

8 (a) the termination of the pregnancy is necessary to
 9 preserve the life of the mother; or

10 (b) the mother and her spouse or either of them have
 11 agreed in writing in advance of the abortion or within 72
 12 hours thereafter to accept the parental rights and
 13 responsibilities of the premature infant if it survives the
 14 abortion procedure.

15 (3) No person may use any premature infant born alive
 16 for any type of scientific research or other kind of
 17 experimentation except as necessary to protect or preserve
 18 the life and health of such premature infant born alive.

19 (4) Violation of subsection (3) of this section is a
 20 felony."

21 Section 10. Section 50-20-112, MCA, is amended to
 22 read:

23 "50-20-112. Penalties. (1) A person convicted of
 24 criminal deliberate, mitigated, or negligent homicide under
 25 this chapter is subject to the penalties prescribed by

1 ~~45-5-101~~ 45-5-102 through 45-5-104.

2 (2) A person convicted of a felony other than ~~criminal~~
3 deliberate, mitigated, or negligent homicide under this
4 chapter, is subject to a fine not to exceed \$1,000,
5 imprisonment in the state prison for a term not to exceed 5
6 years, or both.

7 (3) A person convicted of a misdemeanor under this
8 chapter is subject to a fine not to exceed \$500,
9 imprisonment in the county jail for a term not to exceed 6
10 months, or both."

11 NEW SECTION. Section 11. Repealer. Section 45-5-101,
12 MCA, is repealed.

-End-

cooperative, would join in giving aid to the poor with their phone bills. He submitted written testimony. (Exhibit B0.

CHET KINSEY submitted written testimony from the MONTANA LOW-INCOME COALITION, Helena, as (Exhibit C) and written testimony from the MONTANA SENIOR CITIZENS ASSOCIATION, Inc., Helena, (Exhibit D).

JIM PAINE, State of Montana Consumer Council, appeared in support of the concept and the body of the bill.

GENE PHILLIPS, Northwest Telephones Inc., Kalispell, supports the Senate passed bill and is strongly opposed to the PSC's amendments. (They submitted a map as Exhibit E).

LESTER LOBLE II, Attorney, General Telephone Company of the Northwest, supported the present form of the bill without the amendments.

There were no further proponents, no opponents and no questions.

Senator Thayer closed the hearing on SB 257 by stating that this is a good bill and an opportunity to help people. He stated that the amendments were rejected in the Senate. He urged that the amendments be rejected again.

HOUSE BILL NO. 873, Rep. Hannah, sponsor, District No. 87, stated that this bill generally revises and clarifies the homicide laws.

PROPOSERS:

MARC PACICOT, Montana County Attorney's Association, stated that this is one of the most important criminal law bills that has been introduced in this session. He pointed out that all of the states in the union adhere to the felony murder rule in one form or another and, in essence, what the felony murder rule holds is that when a person becomes engaged in the commission of a crime that has a high homicide risk, for instance, kidnapping or robbery, by doing that they create a high homicide risk. He further explained the bill section by section and gave the history related to the homicide laws.

There were no further proponents, no opponents and no questions.

Rep. Hannah closed the hearing on HB 873.

attached). Rep. Hannah agreed with the amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Addy moved that SB #380 BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 380, BE CONCURRED IN AS AMENDED.

ACTION OF HOUSE BILL NO. 873: Rep. Hannah moved that HB 873 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 12-2 with Reps. Miles and Meyers dissenting. HB 873, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 77: Rep. Giacometto moved that SB 77 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 9-5 with Reps. Miles, Bulger, Rapp-Svrcek, Addy and Darko dissenting. SB 77 BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 10:34 a.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 29, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)			✓
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

MARCH 26,

87

19

JUDICIARY

Mr. Speaker: We, the committee on

HOUSE BILL NO. 373

report

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

FIRST reading copy (WHITE)
color

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

April 7, 1987

The fifty-sixth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on April 7, 1987, by Chairman Joe Mazurek in Room 325 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 873: Senator Pinsoneault, District 27, introduced the bill for Representative Tom Hannah, who was absent because of personal business. Marc Racicot was introduced to explain the bill.

Marc Racicot, Attorney General's office, testified in support of the bill and explained it. He said it focuses on two main topics: 1) the felony murder rule; and 2) the burden of proof in mitigated homicide cases. He explained the felony murder rule charges and convicts a person who commits a felony and a death occurred during the felony. He stated the repeller is where the bill began, Section 11 repeals 45-5-101, which is unnecessary because the section that follows adequately defines the crimes of deliberate mitigated and negligent homicide. He stated this statute also produces mischief because it provides that criminal homicide must be committed purposely, knowingly or negligently, and that is not the case with felony murder. He commented everytime they get a felony murder case they end up arguing whether or not the murder has to occur as the result of actions of a product of purposeful, knowing, or negligent action. He said we tend to win, but this takes valuable time. He pointed out that because this statute is repealed, others have to be to be consistent with it, and that is sections 1, 7, 8, 9 and 10 in the bill. He said the main body of the bill is Section 2, because you have to have a mental state established for the underlying felony before a conviction. He pointed out this takes valuable time. He said Section 3, as amended, reflexes the M.S.C. opinion. He stated you must prove a voluntary act as to the felony, but not the homicide itself, and that is what the language does in this section. He said Section 4 redefines the crime of deliberate homicide by curing the

drafting weaknesses and making it consistent with the law announced by the Supreme Court and with the law the legislature intended in 1973. He pointed out on line 22 in Section 4, the words, "legally accountable" and in the old portion above legally accountable, it mentions "accomplice", which is taken out because the language of the code deals in terms of "legal accountability" and not "accomplice". He explained in Section 4 also that it specifies aggravated kidnapping can serve as an underlying felony for the felony murder rule. He explained this is a doctrine called merger. He said in Section 5 there is an amendment to the mitigated homicide statute which cures the problem of a deliberate homicide if it is committed under circumstances which evidence mental distress, which there is a reasonable excuse. He said the M.S.C. left the burden of proof to no one because it was not in the statutes. He said Section 6 specifies that negligent homicide cannot be a lesser included offense of felony murder as does Section 5. He said he would answer any questions.

PROPOSERS: There were no proposers.

OPPOSERS: There were no opposers, and no questions.

Senator Pinsoneault closed on the bill.

CONSIDERATION OF HOUSE BILL 861: Representative Kelly Addy, Billings, presented the bill because Rep. Nathe had decided not to carry the bill. He brought a map of the BN rail lines in Montana which would be affected by the sale of the Laurel to Sandpoint, Idaho line. He mentioned Whitehall to Butte rail was not in this purchase and he was trying to figure out how BN was going to do that. He felt this is one of the best things that can happen to Montana because it will bring in competition. He stated that farmers in Rep. Nathe's district on the highline, ship their grain down to Butte because it is cheaper to haul in trucks to Butte than putting it on the BN spur that goes by their front door. He said the hazard of a sale is if the sale is controlled by BN. He felt HB 861 provides the state with the terms and conditions of that sale, and on page 2 it files a notice of intent with the A.G., P.S.C., Consumers Council and the Department of Commerce. He said it would require representatives of these groups to come to some meetings. He said the notice of intent identifies the buyer and seller, a thorough description of the rail lines transferred, a copy of the Contract of Sale, labor agreements and any market and feasibility studies, together with a financial disclosure of the buyer. He said this will

SUMMARY OF HB873 (HANNAH)
(Prepared by Senate Judiciary Committee staff)

HB873 generally revises and clarifies the laws relating to homicide. The bill repeals 45-5-101, MCA, which provides that "a person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being" and further provides that "criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide". Current law is confusing because all three types of homicide are called "criminal" homicide throughout the MCA. Most of the amending sections of the bill are changes reflecting the repeal of the term "criminal homicide" and clarifying that homicide is either deliberate, mitigated deliberate, or negligent homicide.

- Section 1. Amends 41-5-305. Amends Youth Court Act to delete reference to "criminal" homicide [Page 1].

- Section 2. Amends 45-2-103. Amends criminal law statute relating to general requirements of criminal act and mental state. Clarifies mental state as element of a crime, with the exception of "felony murder" in which case the offender must have the requisite mental state only as to the underlying felony (not the homicide that occurs during the commission of the felony) [Page 3].

- Section 3. Amends 45-2-202. Amends criminal law statute relating to requirement of a voluntary act as element of a crime by clarifying that there is an exception for "felony murder" for which there must be a voluntary act only as to the underlying felony [Page 5].

- Section 4. Amends 45-5-102. Amends criminal law statute relating to deliberate homicide. Deletes reference to mitigated deliberate homicide and "criminal" homicide and clarifies "felony murder" rule [Page 5].

- Section 5. Amends 45-5-103. Amends criminal law statute relating to mitigated deliberate homicide. Clarifies that mitigating circumstances are an affirmative defense that must be proved by the defendant by a preponderance of the evidence [Pages 6 and 7]. Further provides that mitigated deliberate homicide is not an included offense of "felony murder" [Page 7].

- Section 6. Amends 45-5-104. Amends criminal law statute relating to negligent homicide. Deletes reference to "criminal" homicide and provides that negligent homicide is not an included offense of "felony murder" [Page 7].

- Section 7. Amends 46-18-201. Amends criminal procedure statute relating to sentences that may be imposed. Changes two internal references to reflect changes in subsection numbering in other sections of the bill [Page 10, lines 3 and 8].

- Section 8. Amends 46-18-231. Amends criminal procedure statute relating to fines in felony and misdemeanor cases. Changes an internal reference to reflect change in subsection numbering in another section of the bill [Page 11].

(OVER)

- Section 9. Amends 50-20-108. Amends a section of Montana Abortion Control Act (Title 50, chapter 20, MCA). Deletes reference to "criminal" homicide and makes internal reference changes necessary to reflect changes to criminal law statutes (above) [Page 12].

- Section 10. Amends 50-20-112. Amends section of Montana Abortion Control Act relating to penalties. Deletes reference to "criminal" homicide and makes changes necessary to reflect changes to criminal law statutes (above) [Pages 12 and 13].

- Section 11. Repeals 45-5-101 (see introductory paragraph).

C:\LANE\WP\SUMHB873.

Vernon Westlake didn't like the redraft of Spaeth's amendment.

Ed Steinmetz said this amendment will shut down the water court in a year.

Senator Mazurek said that is a matter that should be dealt with by the appropriation committee.

Senator Crippen asked if the court is going to direct the department on how to spend the money that is appropriated. Mr. Steinmetz said the department provides a variety of functions for the court. He said because there is not enough money in the fund, then the department will only perform certain functions. He said many of the functions of the water court are not that important. Senator Yellowtail said it sounds like Mr. Steinmetz wants to shut the water court down.

Senator Blaylock asked Lorna Frank what she thought about increasing taxes to fund the water court. She didn't think it was a good idea.

Senator Blaylock inquired if the DNRC can function with the funds that have been given. A gentlemen from the DNRC that was not identified, said Senator Story wanted to take a million dollars out of the DNRC account. He said that proposal would eliminate 20 FTE's.

Representative Iverson said he liked Spaeth's last draft of the bill much better than the other ones.

Senator Pinsoneault asked if anyone has thought of another judge taking Judge Leslie's position.

Senator Mazurek asked if the committee needed to look at the repealer. Rep. Spaeth said no.

Representative Bradley in closing, said she didn't know of any retired judges that might be interested if Judge Leslie retires. She also said one can't expect an agency to do anything without money.

ACTION ON HOUSE BILL 873: Senator Pinsoneault stated there is confusion in the felony murder rule of Montana. He said this law is an expansion of the felony murder rule.

Senator Blaylock asked if two guys decide to commit rape, and one does it while the other is the look-out man, and the girl dies, can the look-out man be convicted of murder. Senator Pinsoneault said it could happen.

Senator Pinsoneault moved House Bill 873 BE CONCURRED IN.
The motion carried.

ACTION ON HOUSE BILL 861: Senator Pinsoneault asked what the railroad will do with all this information the bill lets them gather about the potential buyer of the line.

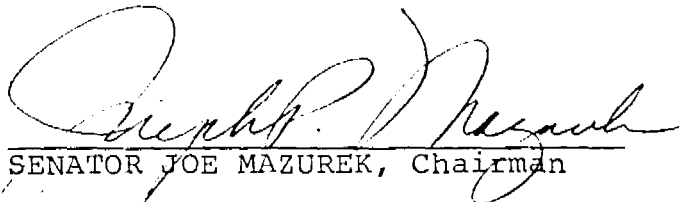
Jim Mular, Burlington Northern, replied the information can be used against the buyer if the buyer does something wrong. Ms. Kim Shultz, A.G., said if the buyers want the sale confidential, they can go to court and get a protection procedure.

Senator Crippen said people will not be quiet about this kind of thing.

Senator Blaylock asked if information about a sale has not been released to the public, can a railroad shipper take the buyer to court to find out information. Mr. Mular said the shipper has to go to the consumer council and find out what he needs to know rather than take the buyer to court. Senator Mazurek said the bill states one can't get that type of information. Mr. Mular replied you can't get it through the courts.

The committee decided to wait on action on HB 861.

ADJOURNMENT: The committee adjourned at 12:10 p.m.


SENATOR JOE MAZUREK, Chairman

STANDING COMMITTEE REPORT

~~APRIL~~ April 6 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration..... HOUSE BILL No. 873

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color

Revise and clarify homicide law.
Mannah (Pinsonneault)

Respectfully report as follows: That..... HOUSE BILL No. 873

~~XXXXXX~~
DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

BE CONCURRED IN

.....
Senator Mazurek

.....
Chairman.